IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 377 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NITINBHAI VASANTBHAI

Versus

DINESHBHAI CHATURBHAI PATEL

Appearance:

1. Criminal Appeal No. 377 of 1992

MR DF AMIN for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

MR BY MANKAD, ADDL.PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 20/07/2001

ORAL JUDGEMENT

The appellant complainant filed direct complaint being Criminal Case No. 1689 of 1990 before the Court of learned Chief Judicial Magistrate, Nadiad, against the

respondent accused for the offence under Section 138 of the Negotiable Instruments Act. The said complaint was filed on 7th March, 1990, on which the learned Chief Judicial Magistrate ordered to issue summons and made it returnable on 25.4.1990. On the returnable date, the complainant was present, but the accused was absent and on behalf of the accused, application was given to adjourn the matter and accordingly it was kept on 23.5.1990. On 23.5.1990, complainant and accused were present, but because of the resolution passed by the Advocates' Association, matter was adjourned to 25.6.1990. On that day i.e. 25.6.1990, neither complainant, nor his Advocate was present and therefore, the learned Chief Judicial Magistrate by his order dated 25.6.90 dismissed the complaint and acquitted the respondent accused though accused was not present. The said order is challenged in this acquittal appeal.

Having regard to the facts stated above, it is clear that the learned Chief Judicial Magistrate in undue haste dismissed the complaint and acquitted the appellant accused for offence under Sec. 138 of the Negotiable Instruments Act.

Though served, no one is appeared for the respondent accused. Learned Additional Public Prosecutor Mr. Mankad supported the appellant complainant and submitted that on facts of this case the learned Chief Judicial Magistrate committed an error in dismissing the complaint and acquitting the accused.

In view of the above discussion, this appeal is allowed. The impugned order dated 25.6.1990 passed by the learned Chief Judicial Magistrate dismissing the complaint of the complainant is hereby quashed and set aside. The matter is now remanded to the learned Chief Judicial Magistrate, Nadiad with a direction that the complaint shall be registered at its original number and after issuing fresh summons to the respondent accused, he shall decide the case in accordance with law as early as possible because it is an old case.

(B.J.Shethna, J.)

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